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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Patent Application of

CASTLEBERRY

Serial No.: 10/670,531

Filed: September 26, 2003

For: AGRICULTURAL FOAM GROWING  
MATERIAL

Examiner Nguyen

Group Art Unit 3643

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

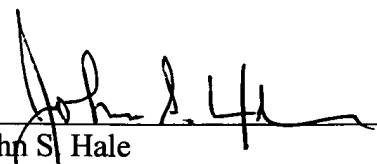
**RESPONSE TO 37 CFR 41.37 ACTION**

In response to the 37 CFR 41.37 Action dated March 2, 2009 (copy enclosed), Applicant hereby submits a revised page two of the Appeal Brief and two copies in which the Status of the Claim section has been clarified with regard to cancelled Claim 24.

If any fees are incurred, kindly charge the same to our Deposit Account No. 07-1340.

Respectfully submitted,

GIPPLE & HALE

  
\_\_\_\_\_  
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McLean, Virginia 22101  
Attorney Ref.: X-9425

interferences or judicial proceedings known to appellant or its legal representatives which may be related to, directly affect or be directly affected by or have bearing on the Board's decision in the pending appeal.

### **STATUS OF THE CLAIMS**

Claims 1-23, 25 and 26 are rejected under 35 USC 103(a) as unpatentable over Pruitt et al. U.S. Patent Number 3,373,009 (hereinafter Pruitt '009) in view of Heller et al. U.S. Patent Number 4,469,502 (hereinafter Heller '502). Claim 24 is cancelled. Claims 1-23, and 25-26 are being appealed.

### **STATUS OF THE AMENDMENTS**

This is the third Appeal Brief filed in the instant case without any resolution.

This case was filed September 26, 2003. The Examiner issued a final rejection on March 4, 2005 rejecting all claims. A Response (no amendments were made to the claims) was made after the final rejection presenting arguments as to why the combined cited references were not valid prior art and a Notice of Appeal was filed. The Response was not entered as the Examiner held that the purposed amendment was not deemed to place the application in better form for appeal by materially or simplifying the issued for appeal. The first Appeal Brief was filed November 2, 2005 and prior to the time for filing the Examiner's Brief, the Examiner reopened examination, citing purported new art. The Examiner issued a first rejection on April 13, 2006 which was responded to by an Amendment on October 13, 2006 amending claims 16 and 20. The Examiner issued a second final rejection on January 10, 2007, again rejecting the claims currently in the case. An amendment was presented on July 10, 2007 amending claim 9 after the second

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/670,531	09/26/2003	Wayne Castleberry	X-9425	6510

7590

03/02/2009

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EXAMINER

ART UNIT	PAPER NUMBER
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DATE MAILED: 03/02/2009

Please find below and/or attached an Office communication concerning this application or proceeding.



**Notification of Non-Compliant Appeal Brief  
(37 CFR 41.37)**

Application No.

10/670,531

Applicant(s)

CASTLEBERRY, WAYNE

Examiner

SON NGUYEN

Art Unit

3643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 14 January 2009 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.  
**EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

2. Status of claims must identify the status of all claims filed in the application (claim 24).

Entire brief is not required only the section found defective.

Tracey M Young/Tracey M Young/  
Patent Appeal Specialist



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number 10/670,531

Filing Date September 26, 2003

First Named Inventor Castleberry

Art Unit 3643

Examiner Name Nguyen

Attorney Docket Number X-9425

### ENCLOSURES (Check all that apply)

☐ Fee Transmittal Form

☐ Fee Attached

☐ Amendment/Reply

☐ After Final

☐ Affidavits/declaration(s)

☐ Extension of Time Request

☐ Express Abandonment Request

☐ Information Disclosure Statement

☐ Certified Copy of Priority Document(s)

☐ Reply to Missing Parts/  
Incomplete Application

☐ Reply to Missing Parts  
under 37 CFR 1.52 or 1.53

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition

☐ Petition to Convert to a  
Provisional Application

☐ Power of Attorney, Revocation  
Change of Correspondence Address

☐ Terminal Disclaimer

☐ Request for Refund

☐ CD, Number of CD(s) \_\_\_\_\_

☐ Landscape Table on CD

☐ After Allowance Communication to TC

☐ Appeal Communication to Board  
of Appeals and Interferences

☐ Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)

☐ Proprietary Information

☐ Status Letter

☒ Other Enclosure(s) (please identify  
below):

#### Remarks

Response to 37 CFR 41.37 Action, copy of Action of 3/2/09, revised page two of Appeal Brief  
and two copies

### SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name

GIPPLE & HALE

Signature

Printed name

John S. Hale

Date

4/1/2009

Reg. No.

25,209

### CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

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This collection of information is required by 37 CFR 1.5. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to 2 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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